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E. Montoya & Sons. Letter from the Secretary of the Interior, transmitting papers in the Indian depredation claim of E. Montoya & Sons.

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E. MONTOKA & SONS.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Papers in the Indian depredation claim of E. Montoya & Sons.

JANUARY 18, 1890.—Referred to the Committee on Indian Depredation Claims and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 16, 1890.

SIR: I have the honor to transmit herewith copy of a communication of 30th September, 1889, from the Commissioner of Indian Affairs, inclosing certain papers in the depredation claim of E. Montoya & Sons, No. 2646, which claim was transmitted to Congress in January, 1889 (see Ex. Doc. 103, Fiftieth Congress, second session).

The papers referred to were returned to the Indian Office from the House of Representatives on the 23d of September, 1889, and are as follows:

Joint affidavit of claimants; joint affidavit of Ricardo Pino and Mauricio Miera; copy of Indian agent's report, dated February 20, 1881; office letter of April 5, 1881, and Department letter of January 12, 1882.

The Commissioner states that all of the above affidavits were executed before a justice of the peace whose official character is not certified to, but if this testimony were in legal form it would not justify his office in changing the opinion heretofore expressed in this case; and, in compliance with his recommendation, the papers are herewith returned with request that they be filed with the above claim.

Very respectfully,

JOHN W. NOBLE,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, September 30, 1889.

SIR: On April 4, 1888, this office made a report on depredation claim No. 2646, of E. Montoya & Sons, amount \$8,300, and pursuant to Department letter of April 7, 1888, the claim, with all the papers then on file, was transmitted to Congress, January, 1889 (Ex. Doc. 103, Fiftieth Congress, second session).

On the 23d instant, the following papers pertaining to this case were returned to this office from the House of Representatives, pursuant to act of March 3, 1885:

Joint affidavit of claimants; joint affidavit of Ricardo Pino and Mauricio Miera; copy of Indian agent's report, dated February 20, 1881; office letter of April 5, 1881, and Department letter of January 12, 1882.

All of above affidavits were executed before a justice of the peace whose official character is not certified to, but if this testimony were in legal form it would not justify this office in changing the opinion heretofore expressed on this claim.

I have the honor to recommend that these papers (which are herewith inclosed) be transmitted to Congress to be filed with above claim.

Very respectfully,

R. V. BELT,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

The Government of the United States debtor to E. Montoya & Sons.

May 23, 1880, to 8,000 sheep, at \$1 each	\$8,000
to 15 burros (asses), at \$20 each	300
Total	8,300

The above stock were stolen by the Apache Indians, belonging to the band of the Chief Victoria.

E. MONTOYA & SONS.

TERRITORY OF NEW MEXICO, *County of Socorro*:

Personally appeared before me, a justice of the peace in and for the county of Socorro, Estanislao Montoya, Desiderio S. Montoya, and Eutimio Montoya, of the firm of E. Montoya & Sons, residents of the town of San Antonio, county and Territory aforesaid, personally known to me, and, who being duly sworn according to law, do declare and say that the account presented by them against the Government of the United States for stock stolen by the Apache Indians, belonging to the band of the Indian chief Victoria, is true and correct in number, and also true and correct in valuation, so near as it is in their power to give it.

ESTANISLAO MONTOYA. [SEAL.]
D. S. MONTOYA. [SEAL.]
EUTIMIO MONTOYA. [SEAL.]

Sworn and subscribed to before me this 31st day of October, A. D. 1880. And I certify that I know the affiants to be credible persons, and that I am not interested in this claim in any manner whatever.

RAFAEL BALENZUELA,
Justice of the Peace, Precinct No. 7, County of Socorro.

TERRITORY OF NEW MEXICO, *County of Socorro*:

On this the 31st day of October, A. D. 1880, personally appeared Ricardo Pino and Mauricio Miera, residents of Socorro County, Territory aforesaid, who, being duly and severally sworn according to law, do declare and say that they are immediate neigh-

bors of Estanislao Montoya, Desiderio S. Montoya, and Eutimio Montoyo of the firm of E. Montoya & Sons, who subscribed to the accompanying affidavit in their presence; that they have read said affidavit and know its contents to be true from the fact that they were eye-witnesses to said robberies by said Indians.

They further declare and state that they knew the animals stolen, and that they know them to be worth full the amount mentioned in announced account, and that they know that E. Montoya & Sons have never sought private satisfaction or revenge from said Indians, and that they have no interest in this claim in any manner whatever, and that they have never borne arms against the United States.

Witness.

RICARDO PINO. [SEAL.]
MAURICIO MIERA. [SEAL.]

TERRITORY OF NEW MEXICO, *County of Socorro* :

I certify, on honor, that Luis Naja was justice of the peace of precinct No. 7, county and Territory aforesaid, in the month of April, 1880, and also Rafael Balenzuela has been justice of the peace of said precinct No. 7 since August, 1880, and is justice of the peace at the present; and also certify that I see them perform the duties of justice of the peace in said precinct.

In testimony whereof I set my hand and official seal at Socorro, N. Mex., this 1st day of December, A. D. 1880.

[SEAL.]

ANTONIO ABEYTIA, Y. A.
Notary Public.

(Indorsed:) The certificate of the notary to the fact that the justices of the peace were actually authorized to administer oaths will not do. See letter to claimant of November 12, 1880.

MESCALERO AGENCY,
South Fork, N. Mex., February 20, 1881.

SIR: I have the honor to return herewith the claim of Messrs. Montayo & Sons. The locality where these depredations are said to have been made is from 130 to 140 miles distant from here, and no communication except by mail, and I have no acquaintance there. Can find no one here that is acquainted with the parties, and consequently can not investigate the credibility of the claimant or witnesses without going there. As the claimants say, the stock was stolen by Indians "belonging to the band of the Chief Victoria," and they are yet "on the war-path" or dead, I can not "submit the claim to them in council."

The Indians that are here have no knowledge of the depredations.

Very respectfully, your obedient servant,

S. A. RUSSELL,
U. S. Indian Agent.

HON. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 5, 1881.

SIR: I have the honor to submit herewith, the claim of E. Montoyo & Sons, filed in this office December 13, 1880, amounting to \$8,300, on account of depredations alleged to have been committed by Mescalero Apache Indians in 1880.

The claimants in their sworn declaration of October 31, 1880, state that they are residents of the town of San Antonio, Socorro County, Territory of New Mexico; that on the 23d of May, 1880, Mescalero Apache Indians, belonging to Victoria's band, stole from them sheep and burros valued at \$8,300.

In support of their claim they file the joint affidavit of Ricardo Pino and Mauricio Miera, dated October 31, 1880, who state that they are residents of Socorro County, Territory of New Mexico; that they are immediate neighbors of the claimants; that they have read said affidavit and know its contents to be true, from the fact that they were eye-witnesses to said robberies; that they knew the animals stolen; that they were worth the amounts mentioned, and that they have no interest whatever in this claim.

Under date of February 20, 1881, S. A. Russell, U. S. Indian agent at the Mescalero Agency, N. Mex., reports that the Indians at the agency have no knowledge of the depredations.

After considering the facts in this case, I find—

1st. The witnesses fail to state where or the circumstances under which they saw the Indian take said stock.

2d. The claimants fail to show that at the time the depredations were committed the property stolen was being properly guarded and cared for, and that the loss thereof was not occasioned by the negligence or carelessness of himself or employes, or that any one was in charge of said stock at the time of the alleged depredations.

I am of the opinion, therefore, that claimants are not entitled to indemnity for their losses.

Very respectfully, your obedient servant,

E. M. MARBLE,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington City, January 12, 1882.

SIR: In compliance with the terms of the seventh section of the act approved May 29, 1872, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1873, and for other purposes," I have the honor to transmit herewith the claim of E. Montoya & Sons, amounting to \$8,300, for compensation on account of depredations committed by Mescalero Apache Indians.

A letter dated the 5th day of April, 1881, from the Commissioner of Indian Affairs, reporting the nature, character, and amount of said claim, is accompanied by the evidence presented in support thereof, and shows the action taken by that officer, under the rules and regulations prescribed by this Department for the investigation of such claims; all which is respectfully submitted for the consideration of Congress as contemplated by said seventh section of the act aforesaid.

Very respectfully, your obedient servant,

S. J. KIRKWOOD,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.